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Stanberry v. State

In a case of first impression, the Court of Appeals of Maryland held in *Stanberry v. State*, 343 Md. 720, 684 A.2d 823 (1996), that a warrantless search of a bus passenger's luggage during a drug interdiction violated the Fourth Amendment insofar as the police unreasonably concluded the luggage had been abandoned.

On August 16, 1993, plainclothes Maryland State Troopers were monitoring buses at the Maryland House rest stop on Interstate 95 in connection with drug interdiction activities. A Greyhound passenger bus carrying defendant Labaron Stanberry ("Stanberry") arrived from Newark, New Jersey. The passengers disembarked to use the rest stop's facilities, after which time the troopers advised the bus driver of the pending interdiction. When the troopers believed that all the passengers had returned to the bus, they went aboard and asked the passengers to identify their baggage. A suit bag in the overhead luggage rack was unclaimed by any of the passengers following the troopers' inquiry. The troopers opened it and found a bag of cocaine and three smaller bags each containing approximately 100 baggies of heroin. Stanberry, who was the last of the passengers to return to the bus from the rest stop, was asked by the troopers if the suit bag belonged to him. He acknowledged, then denied its ownership before finally admitting that he was transporting the drugs

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Temporarily Out Of
The Owner's
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Amendment**

By Reginald L. Smith

to Virginia in exchange for \$300. He was arrested and charged with possession with intent to distribute and transporting a controlled dangerous substance into the state.

At his suppression hearing in the Circuit Court of Maryland for Harford County, Stanberry moved to exclude the drugs on the basis that the troopers' warrantless search violated the Fourth Amendment and that his statement was suppressible as fruit of that illegal search. The State maintained that the search was permissible under the Fourth Amendment because the troopers reasonably believed that the bag was abandoned since none of the passengers claimed it. Stanberry testified that he had not abandoned the bag, but that he merely left it on the bus while he went to use the facilities at the rest stop. The suppression court, however, found that the police could reasonably conclude that Stanberry did abandon the bag and denied the motion. As a result, Stanberry was convicted and sentenced to fifteen years imprisonment, with all but three years suspended.

The Court of Special Appeals of Maryland affirmed the conviction, holding that the search was lawful and that the troopers' belief that Stanberry had abandoned the bag was reasonable. Stanberry's ensuing petition for certiorari was granted by the Court of Appeals of Maryland.

Stanberry's chief argument was that, although the Fourth Amendment's protection against unreasonable searches and seizures does not apply to abandoned property, he had demonstrated no intent to abandon the bag; thus the search was illegal. *Stanberry*, 343 Md. at 730, 684 A.2d at 828. The State countered that even if the bag was not actually abandoned, the search was justified because the troopers reasonably believed that it had been. *Id.* at 730, 684 A.2d at 828. The State also argued that the warrantless search was conducted in good faith. *Id.* at 731, 684 A.2d at 828.

The court first observed that drug interdiction activities in and of themselves are constitutional. *Id.* at 730, 684 A.2d at 828 (citing *Florida v. Bostick*, 501 U.S. 429 (1991)). The constitutionality of drug interdictions conducted on buses, however, had never before been addressed by the Maryland courts even though such operations have become widely used in law enforcement to the point where "basic methods" now exist. *Id.* at 728, 684 A.2d at 827. The court appeared to accept that the interdiction conducted by the Maryland

troopers in the case at bar, which involved boarding the bus, asking passengers to identify their luggage and searching "abandoned" luggage, was consistent with these basic methods. *Id.* The court stressed, however, that the constitution imposes certain limitations as articulated in *Bostick*, where the United States Supreme Court rejected the view then held by the Florida courts that drug interdictions on buses were per se unconstitutional. *Stanberry* at 729-30, 684 A.2d at 828. Under *Bostick*, police may conduct an interdiction in the manner undertaken by the Maryland troopers, including making a request to search a passenger's luggage, provided the officers do not convey a message through force or authority that compliance with that request is required. *Stanberry* at 729-30, 684 A.2d at 828.

Having resolved the threshold question of whether interdiction is constitutional, the court turned to the proper inquiry required to assess Fourth Amendment protection with respect to searches arising out of interdiction. The court recognized that "the scope of protection afforded by the Fourth Amendment is defined in terms of the individual's 'legitimate expectation of privacy.'" *Id.* at 731, 684 A.2d at 828 (quoting *Smith v. Maryland*, 442 U.S. 735 (1979)). Abandoning property, however, effectively defeats that expectation. *Id.* at 731, 684 A.2d at 829. Therefore, the issues for the court were whether Stanberry had a legitimate expectation of privacy

in his suit bag and whether he in fact abandoned the bag, thereby surrendering the expectation of privacy that would otherwise preclude a warrantless search. *Id.* The court of appeals concluded that Stanberry did retain such an expectation of privacy because the suit bag had not been abandoned. *Id.* at 738-39, 684 A.2d at 832.

Strictly speaking, the property abandonment-expectation of privacy question is, in the Fourth Amendment context, often a question of fact and is subjective in nature, because the inquiry first focuses on whether the property owner actually expected a measure of privacy. *Id.* at 732-33, 684 A.2d at 829. The facts necessarily leading to this determination result, however, from an objective analysis to determine if the property owner manifested an intent to abandon the property. *Id.* Here, the court enumerated several key factors: (1) the location of the property; (2) how long it remained in that location prior to the search; (3) its condition at the time of the search; (4) whether the owner asked a third party to watch over it; and (5) whether the owner disclaimed or failed to claim the property in response to police questioning. *Id.* at 733, 684 A.2d at 829-30 (citing *Faulkner v. State*, 317 Md. 441, 451, 564 A.2d 785, 789-90 (1989)).

With respect to drug interdiction, the analysis centers directly on the person's words and actions. *Id.* at 737, 684 A.2d at 831. In particular, a court must determine if there was an affirm-

ative disclaimer of ownership, which ordinarily constitutes abandonment. *Id.* at 737, 684 A.2d at 831-32. In the instant case, the troopers wrongly concluded that Stanberry's bag was abandoned even though there had been no affirmative disclaimer on his part prior to the search of the bag. *Id.* at 738, 684 A.2d at 832.

Moreover, the court maintained, abandonment cannot be inferred simply because a person remains silent or refuses to cooperate with the police during questioning. *Id.* at 736, 684 A.2d at 831. "[A] refusal to cooperate, without more, does not furnish the minimal level of objective justification needed . . . for a . . . seizure." *Id.* (quoting *Bostick*, 501 U.S. at 437)). The court therefore held that the troopers could not infer that Stanberry abandoned his suit bag when he temporarily left the bus and the other passengers did not respond to the troopers' questioning. *Id.* at 738-39, 684 A.2d at 832.

The court viewed these factors in conjunction with the principle that a person ordinarily maintains a legitimate expectation of privacy in the contents of luggage ("a common repository for one's personal effects . . . inevitably associated with the expectation of privacy.") *Id.* at 734, 684 A.2d at 830 (quoting *Arkansas v. Sanders*, 442 U.S. 753, 762 (1979)). The court concluded that Stanberry's expectation of privacy was not eliminated and analogized his situation to a traveler who checks baggage with an airline or a person

who parks a car at a commercial garage. *Id.* at 734-35, 684 A.2d at 830-31. The court specifically restricted its holding to interdiction, recognizing that individual privacy interests must often give way to situations in which the police, acting under the "emergency-aid" exception, are involved in the preservation of human life. *Id.* at 742-43, 684 A.2d at 834. The "emergency-aid" exception is evident, for example, where the police suspect that a person's luggage

contains an explosive device. *Id.* at 743, 684 A.2d at 834.

Stanberry illustrates that interdiction is now an accepted and widely used weapon in a protracted war on drugs. Presumably, law enforcement officials have concluded that among the various modes of passenger transportation, buses are a popular choice for interstate drug traffickers since, relatively speaking, bus transportation is cheaper, bus travel and bus terminals are more pervasive,

and security at bus terminals is more attenuated than, for example, at airports. It would seem that by definition, interdiction activities should command the highest level of procedural safeguards. Maryland's location along the Interstate 95 corridor makes it especially susceptible to the influx of illegal drugs, and the *Stanberry* opinion could impact interdictions in other Interstate 95 corridor jurisdictions such as the District of Columbia and Virginia.



